

ATTACHMENT A

Raundal Coulee

DRAFT DEED OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT ("Easement") is made and entered this ____ day of _____, 2014, by Thomas S. and Karen A. Browning whose address is P.O. Box 64, Fallon, MT 59326 ("Landowners"), and **MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 ("Grantee").

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement by this reference.

Exhibit A - Legal Description of the Land

Exhibit B - Map Identifying Conservation Easement Boundary (Davis Unit), Designated Routes, Designated Agricultural Building Area (Davis Unit).

Exhibit C - Map Identifying Conservation Easement Boundary (River Unit), Designated Routes, Parking Areas, Existing Residential/Agricultural Building Area, and Residential/Agricultural Envelope

Exhibit D - Riparian Habitat

Exhibit E - Standards for Grazing Livestock

I. RECITALS

A. The people of the State of Montana recognize that certain native plant communities providing important wildlife habitat are worthy of perpetual conservation and have directed the Montana Department of Fish, Wildlife, and Parks to acquire conservation easements by voluntary, cooperative means to conserve wildlife habitat.

B. The Landowners are the owners of certain real property in Petroleum and Garfield County, Montana, ("the Land") described in Exhibit A totaling 2,595.76 acres more or less, commonly known as the Tom and Karen Browning Ranch. The Land has a long history of productive farm and ranch management compatible with its conservation values, and maintaining a productive ranching and farming operation on the Land is of national, statewide and local

importance. The Landowners recognize the importance of the Land's open-space character, scenic values, and significant relatively natural features in providing agricultural, natural, recreational, and other resource values to the public as a whole.

C. The Department and the Landowners mutually agree that preservation of the Land in perpetuity will provide significant benefits to the people of Petroleum and Garfield County and the State of Montana by preserving the following resources (hereafter collectively referred to as the "Conservation Values", in perpetuity:

1. Significant agricultural values;
2. Riparian habitat, forested plains, shrub grasslands, and native grassland vegetation communities which are important to the ecological integrity of the Tom and Karen Browning Ranch and which provide habitat for species of special interest, as set forth by the Department in "Montana's Comprehensive Fish and Wildlife Conservation Strategy" (2005);
3. Open-space lands that provide opportunities to continue traditional agricultural practices and maintain wildlife habitat and security;
4. Scenic views for members of the public traveling and recreating near the Tom and Karen Browning Ranch;
5. Access on and across the Land to adjacent public lands, as described in section II.B.4 below for yearlong recreational activities for the general public, including but not limited to hunting, trapping, fishing, hiking, and wildlife viewing;
6. Educational opportunities for the general public;

(hereafter collectively referred to as the "Conservation Values").

D. In particular, the Land consists of 2,595.76 acres in two parcels (515.52 acres and 2,080.24 acres). The parcel located along the Musselshell River (River Unit) is 515.52 acres in size, has 3.5 miles of cottonwood-dominated Musselshell River frontage and is 60 percent native, 40 percent irrigated crop. The second parcel (Davis Unit) is 2,080.24 acres in size of which 65 percent is characterized as ponderosa pine-dominated plains forest and 20 percent sagebrush grassland with the remainder being devoted to dryland crop. The Land provides year-round habitat for elk, mule deer, antelope, whitetail deer and upland game bird species including: Sharp tailed Grouse, Ring Necked Pheasant, Wild Turkey, Hungarian Partridge and Mourning Doves. Additionally, a wide variety of small game, nongame, and neotropical migrant passerines all benefit from the protection and enhancement of the habitats on the proposed property that they depend upon.

E. Landowners and Grantee intend that the Conservation Values of the Land be preserved and maintained by the continuation of land use patterns existing at the time of this grant and that do not significantly impair or interfere with these Conservation Values.

F. The Land provides important opportunities for public recreational activities including but not limited to hunting, trapping, fishing, hiking, and wildlife viewing. Public hunting is an effective tool for wildlife management. Public recreational opportunities secured by this Easement are a desirable use of the Land.

G. Grantee is a non-profit government agency created, among other responsibilities, to preserve and conserve natural areas for aesthetic, scientific, charitable and educational purposes and is an organization qualified under § 170(h) of the Internal Revenue Code, as that section may be amended from time to time, and in the regulations promulgated pursuant thereto, to receive qualified conservation contributions.

II. AGREEMENTS

In consideration of the sums paid by the Grantee, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §76-6-101 et seq., MCA; the Department of Fish, Wildlife & Parks' wildlife habitat acquisition authority, §87-1-209, MCA Title 70, chapter 17, MCA; Landowners voluntarily grant and convey to the Grantee and the Grantee accepts a conservation easement in perpetuity consisting of the following rights and restrictions over and across the Land.

A. PURPOSES

1. The purposes of this Easement are to preserve, protect, and enhance in perpetuity the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety of fish and wildlife species and to prevent any use that will interfere with the Conservation Values of the Land. The Landowners and the Grantee intend this Easement to limit the uses of the Land to those activities that are consistent with the purposes of this Easement.

2. An additional specific purpose of this Easement is to provide to the Grantee pursuant to its authority to acquire interests in land under §87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for recreational uses as authorized under §70-17-102(1) and (7) MCA, in accordance with the terms and conditions set forth in Section II.B.4 below.

3. If one or more of the Purposes of this Easement may no longer be accomplished, such failure of the Purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Grantee and Landowners recognize that changes in economic conditions, in agricultural technologies, in accepted farm and ranch management practices, and in the situation of the Landowners may result in an evolution

of agricultural and other uses of the Land, and such uses are permitted provided they are and remain consistent with the Purposes of this Easement.

4. Pursuant to the terms of §76-6-107, MCA, the Land, preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement. This Purpose is not to be construed as a condition under §76-6-107, MCA, intended to permit the conversion or diversion of a conservation easement or portions of it.

B. RIGHTS CONVEYED TO GRANTEE

The rights conveyed to the Grantee by this Easement are:

1. **Identification and protection.** To identify, preserve, protect, and enhance, in perpetuity, the Conservation Values; subject to the rights reserved by the Landowners in Section C below.

2. **Grantee access.** Upon prior notice to the Landowners, to enter upon and to inspect the Land; to observe, study, make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; to establish and maintain vegetation monitoring transects and enclosures, and to use the property for educational demonstration purposes, all to assure that the Grantee's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowners. The Grantee shall also have the right to enter the Land to enforce the rights granted to the Grantee in this Easement, and Landowners expressly convey to the Grantee a right of immediate entry if it is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Section B, Paragraph 4, this Easement does not grant the Grantee, nor to the public, any rights to enter upon the Land.

3. **Markers.** To place and replace, during inspection authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowners shall not remove such markers without notice to the Grantee and without the Grantee's consent, which will not be unreasonably denied, as provided in Section G below.

4. **Recreational Access.** The right, on behalf of the general public, of access by non-motorized methods from Designated Routes, as identified on the attached Exhibits B and C, for the purpose of recreational hunting, fishing, trapping, and other year-round recreational pursuits on the Land:

- a. The Landowners will allow public access for hunting and trapping of game and furbearing animals, waterfowl, and game birds of all sexes and age classes in accordance with hunting regulations adopted by the State of Montana.
- b. The public may fish all species in accordance with fishing regulations adopted by the State of Montana.

- c. The public access for all recreational activities will be managed on a non-preferential and nondiscriminatory basis.
- d. The Landowners have the right to manage the distribution of hunters and other recreationists on the Land on account of reasonable concerns for the safety of Landowners, Landowners personnel, and livestock.
- e. The Landowners and the Grantee may adopt and implement a mutually acceptable plan for facilitating public access on the Land, including identifying the points of access, motor vehicle use, and other provisions. In the absence of a mutually agreed upon plan for facilitating public access to and across the Land, the following provisions will govern and control public access to the Land:
 - i. The Landowners will allow motorized travel on designated routes across the Land to adjacent public lands and access to the Land for public hunting, trapping, and fishing during all legal hunting, trapping, and fishing seasons on the Land.
 - ii. The Landowners will allow motorized travel on designated routes across the Land to adjacent public lands and access to the Land for all recreational activities year round.
 - iii. The public may travel on and park along any designated route to obtain non-motorized access to the Land and to adjacent public land.
 - iv. The Landowners, Landowners partners, employees, or immediate family may not interfere with the public's access consistent with the access provisions as described in Paragraph II.B.4.
- f. The Grantee may from time-to-time restrict the public's access to the Land as may be deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat, or the public.

C. LANDOWNERS'S RIGHTS

Landowners reserve to themselves, their heirs, their successors, and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Grantee; (b) are not prohibited or restricted by this Conservation Easement; (c) are consistent with the purposes of the Conservation Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights are identified in this Section II.C and are subject to specified conditions or to the requirement of, and procedures for, obtaining the Grantee's prior approval, as described in Section II.G of this Easement. Without limiting the generality of the

previous statements and subject to the restrictions on Landowners activities in this Conservation Easement set forth in Section D below, the Landowners expressly reserve the following rights:

1. **Livestock Grazing.** The right to raise, pasture and graze livestock provided that livestock grazing maintains or enhances the Conservation Values protected by this Easement and incorporates the principles of a rest-rotation grazing system as described in Exhibit E. The details (including class of livestock (cattle), and schematic diagrams of the pasture systems, and rotation schedule among others) are outlined in the Management Plan described in Paragraph II.E of this Easement.

2. **Agricultural Activity.** The right to cultivate, seed, and reseed existing crop fields for the purposes of continued agricultural crop production and for the purpose of restoring native grassland and/or riparian habitats.

3. **Timber Harvesting.** The right to harvest timber and timber products from the Land in a manner that protects the Conservation Values of the Land. This right to harvest timber and timber products is limited to Ponderosa Pine forests only. In addition, Landowners will harvest the timber and manage the Land and its resources in accordance with the established Best Management Practices guidelines outlined in the "Water Quality BMPs For Montana Forests", published by Montana State University Extension Service 2001, on file in the Lands Unit of the Grantee and only upon **prior approval** as defined in paragraph II.G., 1 and 2 (**Prior Approval**) from the Grantee of a timber harvest plan. The Landowner may harvest firewood for normal ranching/residential purposes.

4. **Water Resources.** The right to develop and maintain water resources, including stock water ponds, water wells, spring developments, and pipeline systems, necessary for grazing, wildlife, domestic use, and all agricultural purposes that are allowed by this Easement; provided, however, any new water development or change in water use or distribution may not adversely impact the Conservation Values, including in stream flow, perennial or ephemeral streams, wetlands, or riparian vegetation. Landowners reserve the right to plant native vegetation in the riparian areas on the Land to encourage creek bank stabilization and to restore and reclaim damaged or degraded riparian habitats.

5. **Agrichemicals.** The right to use agrichemicals for control of noxious weeds, rodents, and insects as defined by the State of Montana or other lawful authority with jurisdiction. Such use must be in the amounts and frequency of application constituting the minimum necessary to accomplish reasonable control of noxious weeds, rodents, and insects, and in a manner that will minimize damage to native plants and animals.

6. **Nonresidential Property Improvements.** The right to construct, remove, maintain, renovate, repair or replace canals, irrigation structures, dams, and ditches necessary for generally accepted agricultural activities. However, barriers that inhibit the movement of fish or wildlife, or any canal, irrigation structure, or ditch that would have significant impacts on fish or wildlife habitat or fish or wildlife migration on and through the Land is prohibited. This prohibition does

not apply to corrals and other structures necessary to protect silage pits, haystacks, and domestic gardens.

7. **Fences.** The right to construct, remove, maintain, renovate, repair or replace fences necessary for generally accepted agricultural activities. However, any fence that inhibits the movement of fish or wildlife, or that would have significant impacts on fish or wildlife habitat or fish or wildlife migration on and through the Land is prohibited. This prohibition does not apply to fences and other structures necessary to protect silage pits, haystacks, and domestic gardens. Any new or replaced fence must follow FWP's standards for wildlife-friendly fencing as outlined and defined in FWP's publication "A Landowner's Guide to Wildlife Friendly Fences: How to Build Fence with Wildlife in Mind" 2nd Edition, Revised and Updated 2012, on file in the Lands Unit of the Grantee and as an attachment to the Management Plan referenced in Paragraph II.E. of this Easement.

8. **Residences.** The right, within the Residential/Agricultural Building Area (River Unit) only and shown on the attached Exhibit C, to place or construct, alter, improve, remove, replace, and maintain one single-family residence, and associated non-residential improvements necessary for agricultural purposes. Landowners may relocate or replace the one single-family residence to an alternative site within the Residential/Agricultural Envelope as shown on the attached Exhibit C. Residential structures are prohibited on the Davis Unit.

9. **Agricultural Structures.** The right to construct, remove, maintain, renovate, repair or replace corrals, loafing sheds, machine sheds, and barns as long as these structures are located within the Designated Residential/Agricultural Building Area on the River Unit and the Designated Agricultural Building Area on the Davis Unit identified in the attached Exhibit B.

10. **Roads.** The right to remove, maintain, repair, or replace roads in their current location as identified in the baseline documentation, provided the roads do not significantly impact wildlife habitat or wildlife migration on and through the Land. Upon **Prior Approval** from the Grantee, the Landowners may construct new roads only as necessary to carryout permitted uses on the Land. Grantee's decision will be based on an evaluation of potential significant impacts resulting from such proposed road and the necessity of any such proposed road to carry-out permitted uses on the Land.

11. **Utilities.** The right to maintain, renovate, repair, or replace utilities existing on the Land at the time of the grant of this Easement, including any telephone lines, water lines, and residential or agricultural electricity lines that service the Land or adjacent property; and, subject to **Prior Approval**, the right to install new utilities.

12. **Farm Equipment Use.** The right to use motor vehicles and farming equipment in the ordinary course of Landowners exercising the permitted uses on the Land, but only in a manner that does not significantly impact vegetation or the natural habitat of fish and wildlife species.

13. **Renewable Energy.** The right to place or construct, after **Prior Approval** of the Grantee, facilities for the development and utilization of renewable energy resources, including but not limited to wind and solar for use principally on the Land by the Landowners; provided that the design and location of any such facilities is subject to the **Prior Approval** of the Grantee.

14. **Habitat Enhancement/Restoration.** Subject to **Prior Approval**, the right to restore or improve fish and wildlife habitat through active manipulation of stream banks or through management of riparian, upland, cropland, or forest vegetation (including by fire).

15. **Regulation of Public Use.** The right to regulate public use at all times, subject to the public's recreational and hunting access described under Paragraph II.B.4. of this Easement. The Landowners may deny access to, or expel from the Land, any person for cause, including (but not exclusively) the following: intoxication or use of illegal substances; reckless behavior that jeopardizes human life, wildlife habitat, or Landowners property, or is in violation of law or regulation applicable to public use of the Land; or misconduct under or violation of the terms of public access provided in this Easement, including any plan of access adopted and implemented under this Easement.

16. **Transfer of the Land.** The right to grant, sell, exchange, devise, gift, convey, transfer or dispose of all of Landowners right, title, estate, and interest in the Land in two separate parcels only. Parcels are specifically identified in the attached Exhibit B and Exhibit C and referred to as the Davis Unit and the River Unit respectively. Landowners shall furnish the Grantee with a copy of any document or conveyance utilized to effect the transfer of the Land within thirty days of the execution of said document or conveyance.

Nothing in this Easement shall be construed to prevent Landowners from owning the Land in cotenancy, wherein each cotenant shall have undivided interests in the whole of the Land. Landowners also retain the right to enter into leases provided such agreements are made expressly subject to the terms and conditions of this Easement. Landowners expressly convey to Grantee the right to enforce this Easement against, and to seek and recover all remedies for violation of the terms of this Easement from, all lessees using the Land with Landowners knowledge or consent. Landowners and the Grantee specifically intend that the Land shall not be partitioned by judicial proceedings or otherwise.

17. **Residence-based business.** The right to conduct businesses within the Landowner's residence as long as any such business is not a sales or service business involving regular visits to the Land by the general public or delivery trucks, with the exception of those agricultural uses permitted by this Easement. The onsite retail sale of goods produced and manufactured by any such residence-based business may not take place on the Land.

D. RESTRICTIONS ON LANDOWNERS' ACTIVITIES

Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities are expressly prohibited or restricted.

1. Vegetation Removal. The destruction, removal, control, or manipulation of riparian vegetation or native rangeland (including native grasses, forbs, shrubs and trees) by any means is prohibited, including but not limited to the burning, plowing, chemical treatment, or physical removal, except as incidental to the livestock grazing and as provided for in Paragraph II.C.1, 2, 12, and 13 under Landowner's Rights.

2. Wetland and Riparian Areas. For the purpose of this conservation easement, riparian habitat is defined as river bank and adjacent upland sites associated with the Musselshell River that are comprised of native vegetation and are influenced by adjacent flowing or standing water or by a shallow water table caused by river-associated groundwater. Riparian habitats do not comprise haylands or croplands, active river channels (even if those channels contain some vegetation), or eroded river banks devoid of effective wildlife cover.

a. The draining, filling, dredging, leveling, burning, ditching, diking, or reclamation of any natural or manmade wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland areas may be restored, developed or enhanced, by either the Landowners or the Grantee, to benefit wildlife and to further the purposes of the Easement as a part of a restoration activity approved under Paragraph II.C.13.

b. Landowners must provide for at least 135 acres of undisturbed riparian habitat within the Musselshell River corridor on the River Unit of the Land.

c. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining fences and ditches provided for and allowed under this Easement or as may be allowed by the Grantee as part of an approved plan specifically directed to improve fish or wildlife habitat.

3. Subdivision. The legal or de facto subdivision of the Land for any purpose is prohibited, except as provided in this paragraph. Landowner may sell Davis Unit and River Unit separately as shown and described in the attached Exhibits B and C. For purposes of this Easement, a subdivision means a division of land or land so divided that creates more than one distinct parcel, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed in any manner; and includes any re-subdivision and a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes. Further, the sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is considered a

subdivision under this Easement. The prohibitions against subdivision contained in this paragraph also apply to the sale, rental, lease, or other conveyance of the Land or any portion of the Land subdivided prior to the grant of this Easement to the Grantee. However, the Landowners may lease the Land for agricultural purposes subject to the terms of this Easement and the Management Plan described in Paragraph II.E of this Easement including the grazing system and crop lands outlined in the Management Plan.

4. Water Rights. Landowners shall use their best efforts to assure the retention of any and all water rights currently in use appurtenant to the Land as are necessary to preserve and protect the Conservation Values of the Land and will not transfer, encumber, sell, lease, or otherwise separate such rights from the Land or allow them to be lost or abandoned due to nonuse or for any other reason without **Prior Approval** by the Grantee.

5. Commercial Recreation. The renting or leasing of, or sale of access to the Land to others for hunting, fishing, or any other seasonal recreational purpose, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting or fishing operation, or charging fees (sometimes known as trespass fees) for hunting, fishing, or any other recreational activities on the Land, is prohibited. Neither the Grantee nor the Landowners may sell, assign, convey, or otherwise transfer any interest in the Land or in the Landowners, if the Landowners are a corporation, partnership, or other entity, for the purpose of providing access to the Land in contravention of this paragraph.

6. Rights of Way, Easements, and Utilities. The granting of right-of-way or easements for utilities, roadways, natural gas lines, or other purposes that may be inconsistent with the purpose and terms of this Easement, or the installation of utility structures, lines, conduits, cables, wires or pipelines upon, over, under, within or beneath the Land, except in connection with the construction of permitted agricultural structures or residences on the Land as provided for in Paragraph II.C.6, 8, and 9 are prohibited without **Prior Approval** from the Grantee.

7. Minerals. The exploration for or development and extraction of minerals, coal, bentonite, hydrocarbons, soils, or other materials by any mining method that disturbs the surface of the Land are prohibited. In addition, the exploration for or development and extraction of minerals, coal, bentonite, hydrocarbons, soils, or other materials below the surface of the Land by any sub-surface mining method that would significantly impair or interfere with the Conservation Values of the Land is prohibited. Prior to engaging in any subsurface or remote exploration for or development and extraction of minerals, coal, bentonite, hydrocarbons, gravels, soils, or other materials not otherwise prohibited by this paragraph, Landowners shall seek **Prior Approval** from the Grantee and submit a plan for the Grantee's review and approval in order to ensure that such a proposal shall not result in adverse impacts to the Land's surface such as subsidence.

Exploring for and/or extracting oil, gas and other hydrocarbons must be conducted in a manner that does not constitute surface mining and that is in accordance with the following conditions, subject however to all prior mineral and royalty conveyances and prior written

approval by the Grantee.

- a. Exploration for or extraction of oil, gas and other hydrocarbons must be conducted in a manner consistent with reasonable, site specific conditions developed by the Grantee to protect the Conservation Values of the property. No refineries or secondary production facilities may be located on the property, and any hydrocarbons produced from the property must be transported by pipeline or other means approved in advance by the Grantee.
- b. Travel for the purpose of oil, gas or other hydrocarbon development shall be restricted to existing roads or to new roads with **Prior Approval** in advance by the Grantee.
- c. Areas of surface disturbance shall have only limited and localized impact and must be mitigated by restoring soils to the original contours and replanting native vegetation, as specified in a reclamation plan approved by the Grantee.
- d. Landowners agree not to enter into any lease or other agreement for the exploration or development of the interests in any oil, gas or other hydrocarbon substance, unless such lease or other agreement includes the provisions of this paragraph, and unless such lessee or other party agrees in writing to carry out any hydrocarbon exploration or development activity in strict accordance with all of the restrictions of this paragraph. Nonetheless, the Landowners shall remain liable for compliance with all of the terms and conditions of this Easement.
- e. Landowners agree to notify Grantee of any notice received by any third party mineral right holder and work cooperatively to develop a Surface Use Agreement that is consistent with Best Management Practices guidelines for the extraction of oil and gas, other hydrocarbons, and minerals developed by the Department of Interior, Bureau of Land Management.

8. Gravel Pits. There is one gravel pit on the Land and its location is identified on attached Exhibit C. The gravel pit will be limited in size to five (5) acres. Gravel from this pit is to be used on the Land only. Commercial sale of the gravel is prohibited.

9. New Structures. The construction or placement of any new structure, building, or improvement of any kind is prohibited, other than as expressly allowed in this Easement.

10. Commercial Feedlots. The establishment or maintenance of any commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as the establishment or maintenance of a permanently constructed confined area or facility where animals are stabled, confined, and fed within which the Land is not grazed or cropped annually and the area is used for the purposes of engaging in the business of the reception and feeding of livestock for hire.

11. Alternative Livestock. The use of the Land in connection with an alternative livestock ranch, as defined under § 87-4-406(2), MCA, game bird farm, shooting preserve, fur farm, zoo or menagerie, or the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any animal that may pose a threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited.

12. Commercial Uses. Any commercial or industrial use of the Land or commercial or industrial activity on the Land is prohibited except as allowed in Section II.C.16. and those uses related to agricultural uses permitted by this Easement.

13. Hazardous Materials. The processing, dumping, storage, or other disposal of wastes, refuse, and debris is prohibited, except for the composting in accordance with all applicable laws and requirements of non-hazardous and nontoxic organic materials generated by activities permitted on the Land.

E. MANAGEMENT PLAN

The parties to this Easement developed a Management Plan for grazing and farming management, public hunting, fishing, recreating, and access management, specific wildlife habitat and wildlife passage improvement measures, and other matters of mutual interest to the parties. The Management Plan is not incorporated into this Easement. The parties agree to abide by the specific requirements of the Management Plan that they developed to provide detailed guidance in management of the Land. The parties shall meet as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendments to the Management Plan must have the consent of both parties and must be in writing and signed and acknowledged by the parties. If there is any inconsistency between the terms of the Management Plan and this Easement, the terms of this Easement control. The Grantee shall keep a current Management Plan in its files and will make the current Management Plan available to successors in interest to the Land. The Grantee and Landowners agree that if the Management Plan contains any summaries of, or representations about the terms or conditions of this Easement, any conflict or inconsistency between the terms and conditions of this Easement and the Management Plan shall be governed by the express terms and conditions herein and not in the Management Plan.

The successor in interest may sign and acknowledge the Management Plan that is in effect at the time of the transfer of ownership or, upon agreement with the Grantee, may sign and acknowledge a revised Management Plan. **In the absence of a revised Management Plan, the Management Plan in effect at the time of the transfer of ownership continues to be the binding agreement between the Landowners and Grantee until and if a revised Management Plan is adopted.**

F. EASEMENT BASELINE REPORT

The parties agree that an Easement Baseline Report (Baseline Report), including photographs, maps, surveys, studies, reports, and other documentation, will be completed by a Grantee biologist or natural resource professional familiar with the area. The Baseline Report will be reviewed by the Grantee and Landowners, and acknowledged by them, in writing. The Baseline Report will be an accurate representation of the physical and biological condition of the Land and its nonresidential physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Grantee and shall be made available to Landowners for inspection and reproduction at Landowners request. The parties intend that the Baseline Report shall be used by the Grantee to monitor Landowners compliance with the terms and conditions of this Easement. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the Baseline Report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy. The Grantee and Landowners agree that if the Baseline Report contains any summaries of, or representations about the terms or conditions of this Easement, any conflict or inconsistency between the terms and conditions of this Easement and the Baseline Report shall be governed by the express terms and conditions herein and not in the Baseline Report.

From time to time, with the agreement by the Landowners, the Grantee may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other improved habitat conditions. Upon review and approval of the updated report by the Landowners and the Grantee, the improved conditions documented in the Updated Easement Baseline Report shall be considered along with the original baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

G. NOTICE AND APPROVAL

The purpose of requiring the Landowners to notify the Grantee prior to undertaking certain permitted activities is to afford the Grantee an opportunity to ensure that activities are designed and carried out in a manner consistent with the terms, purposes and other provisions of this Easement, including the Grantee's ongoing obligation to protect and preserve, in perpetuity, the Conservation Values.

1. Notice and Approval Requirements. Whenever **Prior Approval** is required, Landowners must notify the Grantee and request approval in writing not less than sixty (60) days prior to the date the Landowners intend to undertake the activity. The Landowners shall send notice either by (a) registered or certified mail, return receipt requested, or (b) courier service, provided that the sender requests next-business-day delivery and obtains a signed proof of delivery; or (c) personal delivery. Notices shall be delivered to the following addresses:

To Grantee:

Administrator, Wildlife Division
Department of Fish, Wildlife & Parks
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701

To Landowners:

Thomas S. and Karen A. Browning
P.O. Box 64
Fallon, MT 59326

or to such other addresses as either party from time to time shall designate by written notice to the other. Where notice to Landowners of entry upon the Land by the Grantee is required under this Easement, the Grantee may notify Landowners or any agent of Landowners by telephone, mail, email, or in person prior to such entry.

2. Landowners Request for Approval. The Landowners notice and request for approval must describe the proposed activity, including, but not limited to (as appropriate to the proposal), the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to its consistency with this Easement. The request must provide the Grantee with an address, to which responses should be sent, and the names and addresses of persons to contact about the request if different from the Landowners address listed in subparagraph 1 above.

3. Grantee's Response. The Grantee has sixty days from receipt of the notice, as indicated by the registered or certified return receipt, or other proof of receipt to review the proposed activity and to notify the Landowners of its decision to approve or disapprove of the proposed activity. The 60-day period for the Grantee's review of a request for approval shall not begin until the Grantee has received adequate information from the Landowners to evaluate the proposed activity. Disapproval must be based upon the Grantee's opinion that the proposed activity is inconsistent with the terms or purposes of this Easement. If, in the opinion of the Grantee, it is possible that the proposed activity may be modified to be consistent with the Easement, the Grantee shall inform the Landowners of the manner in which the proposed activity may thereafter be conducted in a manner that is mutually acceptable to the Landowners and the Grantee. The Grantee's response to Landowners notice must be sent by registered or certified mail, return receipt requested, or delivered by courier service, provided that the sender requests next-business-day delivery and obtains a signed proof of delivery, or personal delivery service. Except as provided in subparagraph 5 below, a proposed activity may be commenced or conducted only after the Landowners have received the Grantee's express written approval, and only in the manner requested by the Landowners and approved by the Grantee.

4. **Grantee's failure to respond.** If the Grantee fails to post its response to the Landowners notice within sixty days of receipt of the notice, as provided in subparagraph 3 above, the proposed activity will be deemed to be consistent with the terms of this Easement. The Grantee has no further right to object to the activity identified by such notice. The Grantee's failure to respond to any individual request for approval shall not be deemed to be a waiver of any other duty and obligation of the Landowners to seek Prior Approval for other specific activities for which the Grantee's approval is necessary.

5. **Acts beyond Landowners' control.** The Landowners are under no liability or obligation for any failure to give prior notice for any activity undertaken by the Landowners necessitated by virtue of fire, flood, act of God, or other element, or any other emergency. Nevertheless, after such an event, if there is damage to the Conservation Values protected by this Easement, the Landowners shall notify the Grantee of the damage as soon as practicable and the Grantee shall have the right to mitigate the damage.

H. REMEDIES FOR UNAUTHORIZED ACTIVITIES AND ENFORCEMENT RIGHTS.

If the Grantee determines that the Landowners have violated the terms of this Easement, or if the Landowners undertake any activity requiring approval of the Grantee without first obtaining such approval, the Grantee shall give written notice to the Landowners of the violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged. If the Landowners:

1. Fail to cure the violation within thirty days after receipt of notice from the Grantee, or
2. Under circumstances where the violation cannot reasonably be cured within a thirty day period, fails to begin curing the violation within the thirty day period (or, within 30 days of Landowners receipt of notice from the Grantee, if Landowners fail to agree with the Grantee in writing on a date by which efforts to cure such violation will reasonably begin), or
3. Fail to continue diligently to cure such violation until finally corrected, the Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Grantee may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for which it may be entitled for violation of the terms of this Easement.

If the Grantee, in its sole discretion, determines that a violation is threatened or imminent or that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Grantee may pursue its remedies under this paragraph without prior notice to the Landowners or without waiting for the period provided for cure to expire.

The Grantee's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement. The Grantee is entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement. The Grantee's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Grantee to bring any action against the Landowners for any injury to or change in the Land resulting from causes beyond the Landowners control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Grantee, and any forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowners may not be deemed or construed to be a waiver by the Grantee of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by Landowners may impair the right or remedy or be construed as a waiver, nor will any forbearance or delay give rise to a claim of laches, estoppels, or prescription.

Costs of restoration of the Conservation Values that are attributable to Landowners violation or breach of the terms of this Easement shall be borne by Landowners, unless a court of competent jurisdiction orders otherwise or unless the parties mutually agree to share such costs. Attorneys' fees and reasonable costs of suit that are incurred by a prevailing party in enforcing the terms of this Easement against the other party, including recovery of costs and damages if authorized under Montana law for temporary or preliminary injunctive relief that is improvidently granted, shall be borne by the non-prevailing party if so ordered by a court.

If a dispute arises between Landowners and the Grantee concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowners agree in writing not to proceed with the use or activity pending resolution of the dispute, either Landowners or the Grantee may refer the dispute to mediation by request made in writing to the other party. Within ten days of receipt of such referral, Landowners and the Grantee will select an impartial mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowners and the Grantee agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section.

I. HOLD HARMLESS AND INDEMNITY

The Landowners shall hold harmless, indemnify, and defend the Grantee and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, regardless of cause, unless due to the negligence or willful misconduct of the Grantee or its agents, employees, or contractors.

The Grantee similarly agrees to hold harmless, indemnify, and defend the Landowners and their employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of the Grantee's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of the Landowners or their agents, employees or contractors.

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION

It is the unequivocal intention of the parties that the conservation purposes of this Easement are carried out in perpetuity. If circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction[or in accordance with the provisions §76-6-107, MCA], and the amount of the proceeds to which the Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Land, in whole or in part, subsequent to such termination or extinguishment, shall be determined as set forth in this Section II.J, unless otherwise provided by Montana law at the time. The Grantee shall use all such proceeds in a manner consistent with the conservation purposes of this Easement. The parties agree that changed economic conditions shall not be circumstances justifying the modification, termination, or extinguishment of this Easement.

This Easement constitutes a real property interest immediately vested in the Grantee. For the purposes of this paragraph, the parties stipulate that the Easement has a fair market value of 45 percent of the value of the fee unrestricted by the easement. The value of the conservation easement to the fee was established by an appraisal acquired by the Grantee at the time of the creation of this Easement. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the property unencumbered by the Easement remains constant. The Grantee and Landowners contributed 45 percent and 55 percent, respectively. The Landowners contributed 0 percent through donation of the value of the Easement purchase price based upon

the aforementioned appraisal. The values at the time of this grant are those values used to calculate the deduction, if any, for federal income tax purposes allowable by reason of this grant, pursuant to §170(h) of the Internal Revenue Code of 1986, as amended.

If the Land covered by this Easement is taken, in whole or in part, by exercise of the power of eminent domain, the Grantee and the Landowners shall be entitled to 45 percent and 55 percent of the compensation respectively, attributable to the value of the conservation easement on the Land, but not the Land itself and shall promptly remit to the Grantee their respective share of the proceeds consistent with the percentages set forth in this sentence. The Grantee may not, for the purposes for which this Easement was acquired, take the Land, in whole or in part, by the power of eminent domain. Any expense incurred by the Landowners and the Grantee in any such action shall be first reimbursed out of the condemnation award or settlement, and the remainder of the proceeds shall be divided between the Landowners and the Grantee in proportion to their interest in the Land.

This Easement constitutes a real property interest immediately vested in the Grantee, which, for purposes of this Section II.J., the relative value of the parties' financial interest in the Easement for the purposes of compensation shall remain constant. Landowners agree that the Grantee shall be compensated for the proportionate value of the Easement in the event of its termination, extinguishment, or condemnation, in whole or in part.

K. SUBORDINATION

At the time of conveyance of this Easement, the Land is subject to a mortgage [or Deed of Trust or Contract for Deed] or other security interest, in favor of _____ [Bank], [address] ("Lienholder"). Said Mortgage/Deed of Trust/Abstract of Contract for Deed was recorded on _____, in Book _____, page _____, under Document No. _____, Records of _____ County, Montana (the "Mortgage"). The Lienholder has agreed by separate Subordination Agreement, which will be recorded immediately after this Easement is granted, to subordinate its rights in the Land to this Easement to the extent necessary to permit the Grantee to enforce the purpose of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the Lienholder or other holders of a security interest. The priority of the existing mortgage or other security interest with respect to any valid claim to the proceeds of the sale or insurance, or to the leases, rents, and profits of the Land is not affected by this Easement. All provisions contained in this Section II.K. shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Landowners agree that agricultural leases and contracts existing at the time of this grant of Easement, if any, are expressly subordinated to the provisions of this Easement, and that all new agricultural leases and contracts will be subordinated to the terms and purposes of this Easement.

L. ASSIGNMENT

This Easement is transferable, but the Grantee may assign this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana, including §§ 76-6-104(4) and 76-6-104(5), MCA. Any such qualified organization must agree in the assignment instrument to enforce the conservation purposes of this Easement in perpetuity.

M. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Landowners and the Grantee are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the qualifications of this Easement under any applicable laws, including § 76-6-101, et seq., MCA, or § 170(h) of the Internal Revenue Code, as amended. Any amendment must be consistent with the purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited increment or private benefit to the Landowners or any other parties. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of Petroleum and Garfield Counties.

N. RECORDING

The Grantee shall record this instrument in a timely fashion in the official records of Petroleum and Garfield Counties, Montana, and may re-record it at any time as may be required to preserve its rights in this Easement.

O. REPRESENTATIONS AND WARRANTIES

Landowners represent and warrant that, after reasonable investigation and to the best of his/her knowledge:

1. Landowners have clear title to the Land; that Landowners have the right to convey this Conservation Easement; and that the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Grantee.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws,

regulations, and requirements. No deposit, disposal, or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.

3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state, and local laws, regulations, and requirements.

4. Landowners and the Land are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Land and its use.

5. There is no pending or threatened litigation in any way affecting, involving, or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.

6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowners might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

P. GENERAL PROVISIONS

1. **Controlling Law.** The interpretation and performance of this Easement will be governed by the laws of the State of Montana.

2. **Construction.** Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of §76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid. The parties acknowledge that each party and its counsel have reviewed and revised this Easement and that no rule of construction that ambiguities are to be resolved against drafting party shall be employed in the interpretation of this Easement.

3. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.M above.

4. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Landowners title in any respect.

5. **Successors.** This Easement is binding upon, and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.

6. **Termination of Rights and Obligation.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.

7. **Severability.** If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.

8. **Subordination.** No provision of this Easement is to be construed as impairing the ability of Landowners to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to the terms of this Easement.

9. **Subsequent Deeds and Instruments.** The Landowners agree that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, or other legal instruments conveying an interest in the Property (including any leasehold interest).

TO HAVE AND TO HOLD unto the Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF, Landowners and the Grantee have set their hands on the day and year first above written.

LANDOWNERS

MONTANA FISH, WILDLIFE & PARKS

By: _____
Thomas S. Browning

By: _____
M. Jeff Hagener, Director

By: _____
Karen A. Browning

State of Montana)
 : ss.
County of Petroleum and Garfield)

This instrument was acknowledged before me on _____, 2014, by
Thomas S. Browning, Landowner.

(SEAL)

Signature of Notary Public for the State of Montana
Print _____
Residing at _____
My commission expires _____

State of Montana)
 : ss.
County of Petroleum and Garfield)

This instrument was acknowledged before me on _____, 2014, by Karen A. Browning, Landowner.

(SEAL)

Signature of Notary Public for the State of Montana
Print _____
Residing at _____
My commission expires _____

State of Montana)
 : ss.
County of Lewis & Clark)

This instrument was acknowledged before me on _____, 2014, by M. Jeff Hagener, Director of Montana Department of Fish, Wildlife, & Parks.

(SEAL)

Signature of Notary Public for the State of Montana
Print _____
Residing at _____
My commission expires _____

EXHIBIT A
Legal Description and Acreages

TRACT 1: Davis Unit

Township 16 North, Range 28 East, M.P.M., in Petroleum and Garfield County, Montana

| | | |
|-------------|------------------------|--------------|
| Section 1: | Lots 3 & 4, S½NW¼, SW¼ | 272.18 acres |
| Section 2: | E½, E½NW¼, NE¼SW¼ | 368.06 acres |
| Section 11: | NE¼, N½SE¼ | 240.00 acres |
| Section 12: | W½NE¼, NW¼, N½SW¼ | 320.00 acres |

Township 17 North, Range 28 East, M.P.M., in Petroleum and Garfield County, Montana

| | | |
|-------------|------------|--------------|
| Section 28; | SE¼ | 160.00 acres |
| Section 33: | NE¼, S½ | 480.00 acres |
| Section 34: | SW¼, S½SE¼ | 240.00 acres |

Total Davis Unit Acres 2,080.24

TRACT 2: River Unit

Township 17 North, Range 29 East, M.P.M., in Petroleum and Garfield County, Montana

| | | |
|-------------|---------------------|--------------|
| Section 13: | Lot 14 | 2.20 acres |
| Section 24: | SE¼SW¼ | 40.00 acres |
| Section 24: | Lots 2 & 3 | 57.48 acres |
| Section 25: | Lot 2, N½NE¼, E½NW¼ | 177.94 acres |

Township 17 North, Range 30 East, M.P.M., in Petroleum and Garfield County, Montana

| | | |
|-------------|------------|-------------|
| Section 19: | Lot 4 | 38.48 acres |
| Section 30: | Lots 2 & 3 | 65.72 acres |

Township 17 North, Range 29 East, M.P.M. in Garfield County, Montana

| | | |
|-------------|------------------------|--------------|
| Section 24: | Lots 7, 8, 9, 10, & 13 | 133.70 acres |
|-------------|------------------------|--------------|

Total River Unit Acres 515.52
Total Acres: 2,595.76

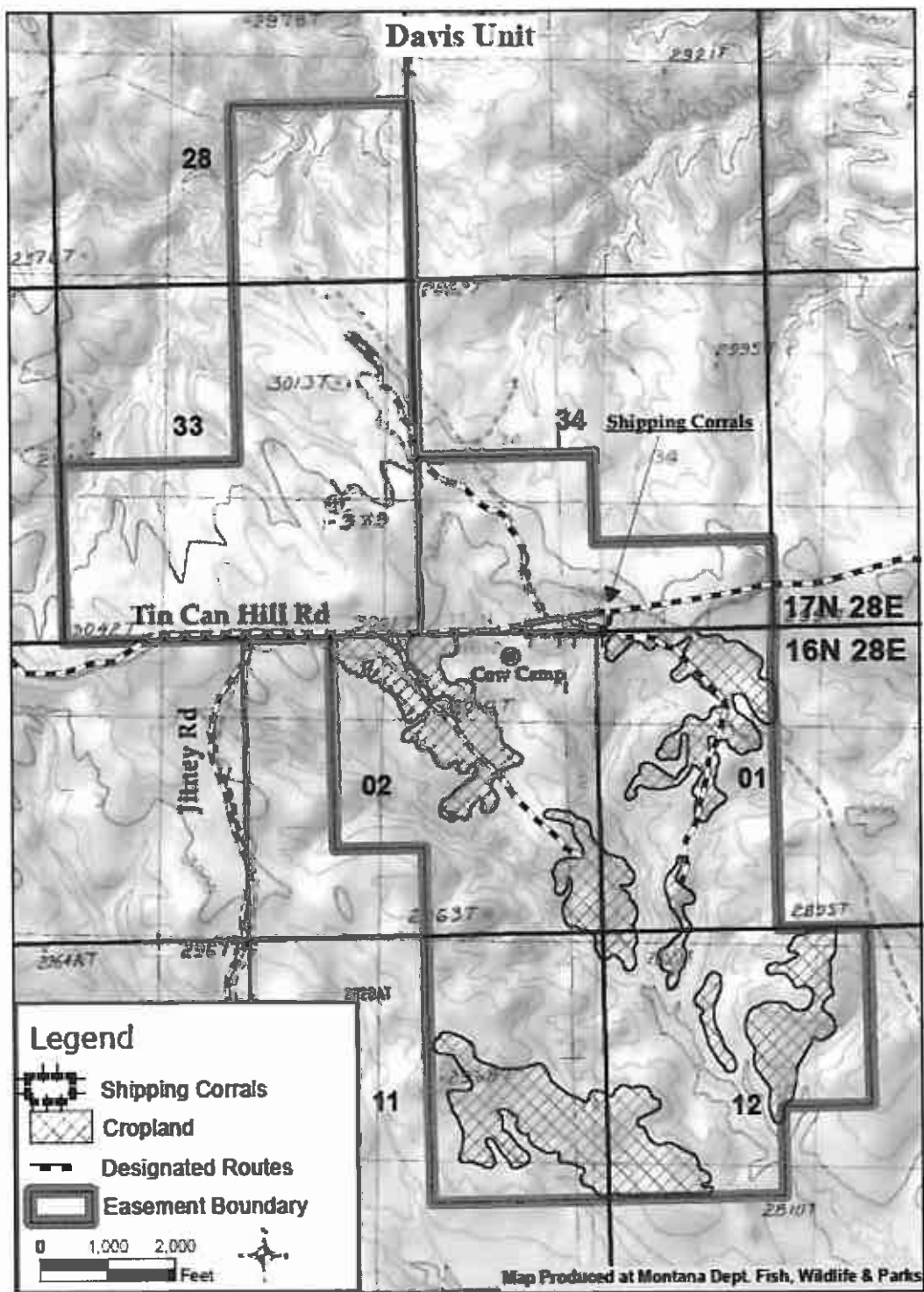


EXHIBIT B

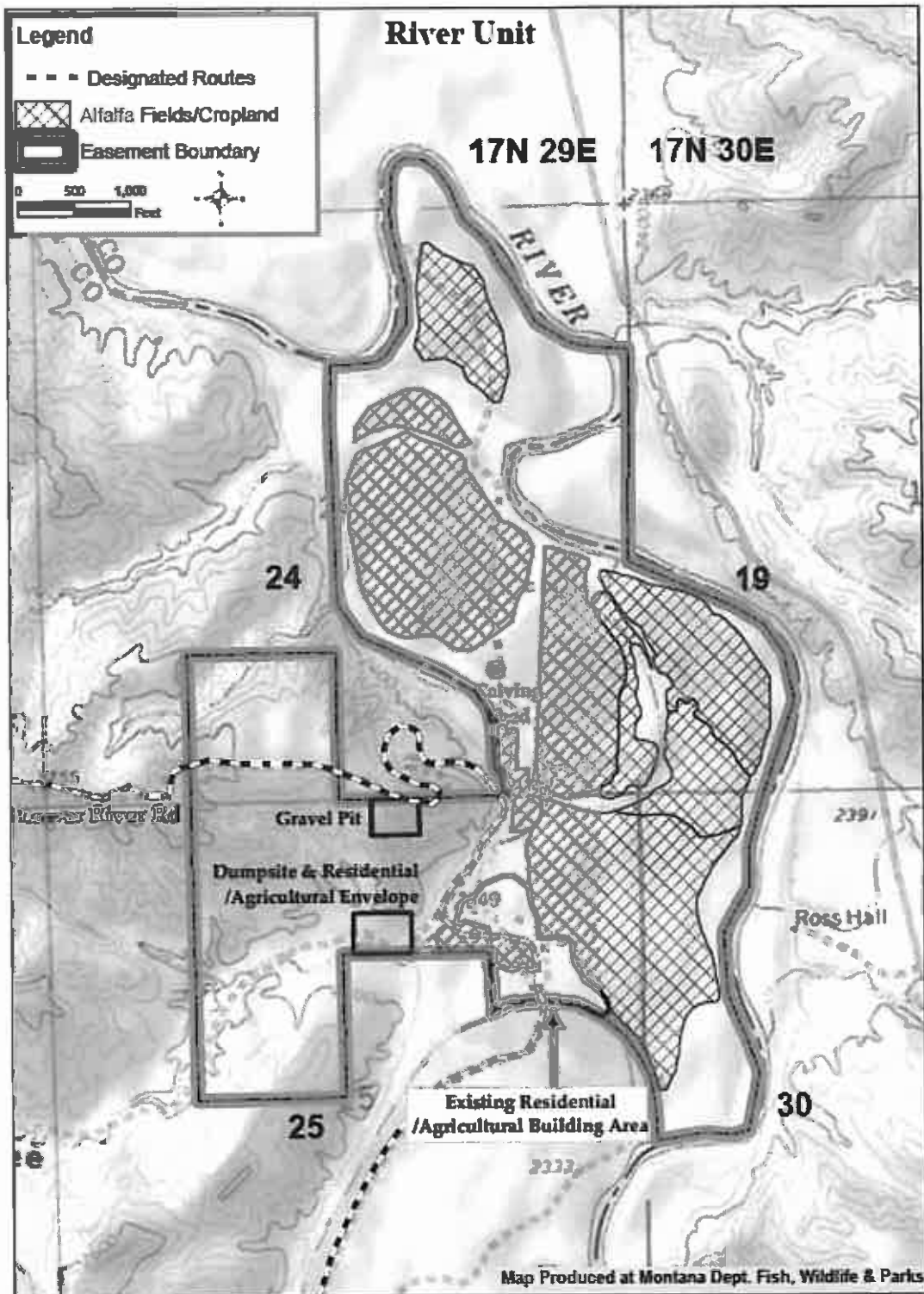


EXHIBIT C

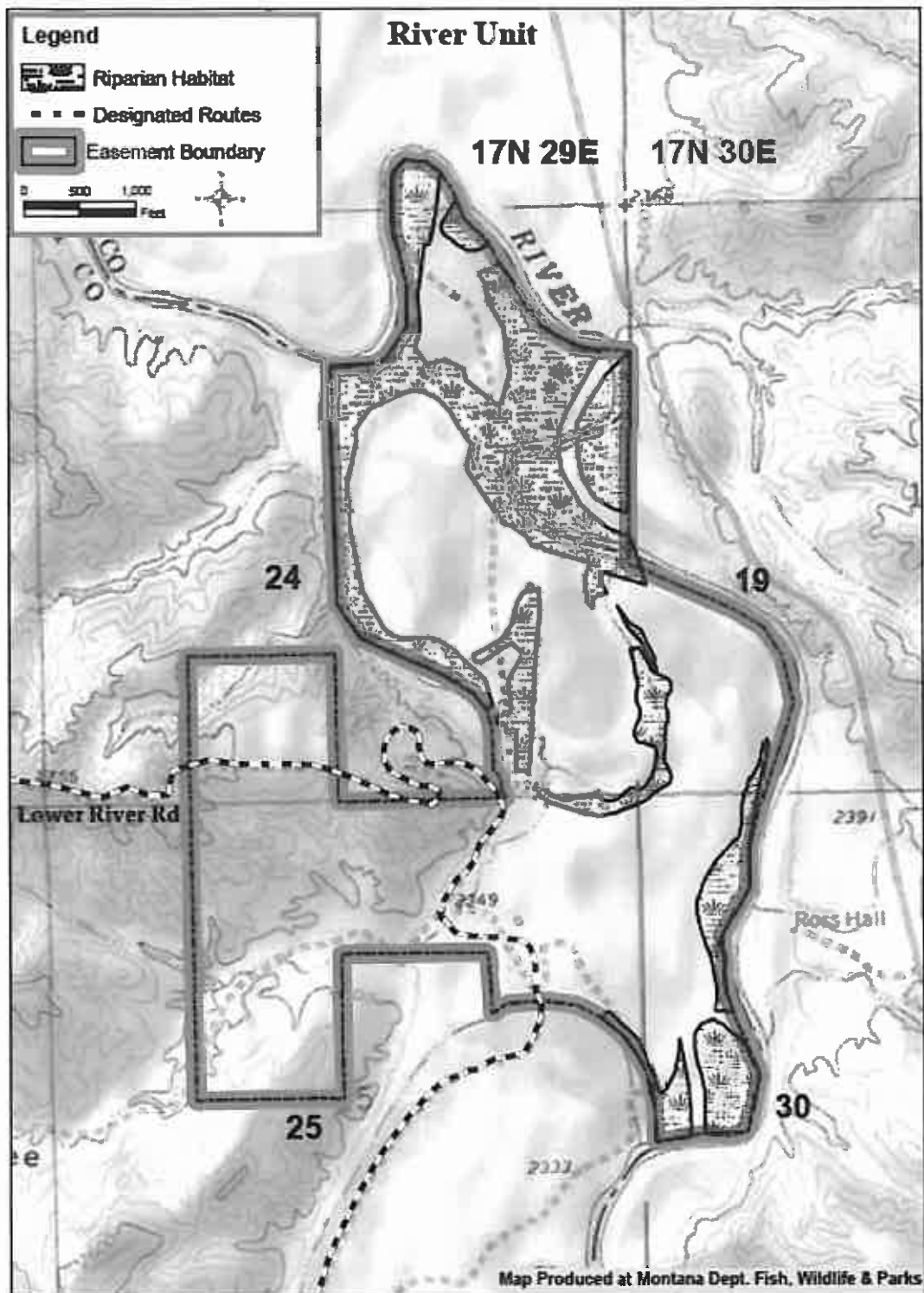


EXHIBIT D

EXHIBIT E

RAUNDAL COULEE CONSERVATION EASEMENT

FWP MINIMUM STANDARDS FOR GRAZING LIVESTOCK

Introduction

The following grazing standards represent the minimum required by FWP of a landowner who reserves the right to pasture and graze livestock (private and public land). These standards apply to all FWP funded projects; at times it may be necessary to provide more rest from grazing than described as minimum to meet specific wildlife or fisheries habitat objectives. The minimum is most frequently applied (without additional adjustment for wildlife and fisheries needs) on projects like conservation easements and Upland Game Bird Habitat Enhancement Projects where the property remains in private ownership and agricultural use remains the primary objective. On FWP WMAs, wildlife production and habitat conservation are the primary objective and when livestock grazing occurs it is not unusual for the amount of rest from livestock grazing to exceed that required by the minimum standard. Also, on some areas where wildlife production is the primary objective, grazing intensity may be reduced to a level significantly lower than allowable by the minimum standard. These standards are designed to address management of both upland and riparian landforms.

Why a minimum standard?

Livestock grazing is the predominant land use in Montana. As the state's primary fish and wildlife management agency, FWP is actively involved with livestock grazing as it influences fish and wildlife habitats throughout Montana. About 2.4 million cattle are maintained in Montana. Livestock grazing occurs on about 69% of the state's land surface. Potential impacts to fish, wildlife, and their habitats caused by grazing are well documented in the literature. Also well documented are potential benefits for conservation that can be derived for some wildlife species through carefully planned livestock grazing strategies. Conserving wildlife habitat while continuing livestock grazing typically requires management strategies that differ from those employed for the sole purpose of maintaining a sustainable livestock forage base that maximizes livestock production. One reason for the difference in management strategies is because vegetation is much more than a forage base for wildlife. Vegetation species composition, structure, and diversity are important aspects of cover essential to the survival and production of wildlife. Healthy riparian communities are critical not only for aquatic species but for proper channel and flood plain function. Seventy-five percent of all Montana wildlife species rely on riparian areas for all or a portion of their lives. This includes many species covered in the FWP's Comprehensive Fish and Wildlife Strategy. When livestock grazing occurs, it is not unusual for cover to be the population limiting factor for many species. Aldo Leopold referred to this concept of habitat quality as 'Quality of Landscape'. Addressing cover is especially

important in the implementation of FWP's Comprehensive Fish and Wildlife Strategy. It is therefore possible that a livestock operator may be employing a grazing strategy that maintains a sustainable forage base on most of the property, but may not be providing adequate forage, cover, or floral diversity for important fish and wildlife species.

Sustainable livestock production often employs grazing strategies emphasizing production and maintenance of grass species while placing less emphasis on the maintenance of forbs and woody plants. Many wildlife species require grazing strategies that emphasize healthy woody plants and availability of forbs and grass seed heads on at least portions of the landscape every year. The maintenance of robust woody vegetation and cover is also a very important component of healthy riparian systems. Healthy ecological systems are essential for a variety of aquatic and terrestrial riparian obligates.

The purpose of FWP's minimum grazing standards to achieve a balance between maintaining sustainable agriculture and quality fish and wildlife habitat on working ranches yet provide flexibility to conserve and protect habitat needs where they are the primary objective and agriculture is secondary. FWP has applied the standard successfully over the past 30 years on a variety of projects ranging from working cattle ranches to FWP WMAs. There are examples in Montana and other states where a grazing standard similar to FWP's is being applied by livestock operators independent of FWP.

Grazing Plan

Prior to grazing livestock the Landowner and FWP must agree upon and implement a grazing plan. A grazing plan includes a map of the pastures, a grazing formula specific to those pastures, the class of livestock, and other information pertinent to the management of livestock. Format for the grazing plan is included as part of the management plan template for conservation easements. The grazing plan will be included as part of the management plan for easement projects, and will define the limits and extent to which grazing may occur. The Management Plan may be amended by mutual consent, as more particularly described in Paragraph II.E. of the Conservation Easement. For other projects the management plan will be included as an attachment to the grazing lease or contract. On conservation easements the grazing plan will be enforceable only on lands covered by the easement.

Upland Minimum Standards for Summer/Fall Systems

This standard applies to upland pastures in native plant communities (i.e., generally on soils that have never been plowed) and for all riparian pastures. The grazing plan must meet or exceed minimum levels of periodic rest from livestock grazing allowing native plants adequate opportunity to reproduce and replenish root reserves. The minimum amount of rest required for any pasture grazed in one year during the plant growing season is defined as rest throughout the following year's growing season (i.e., grazing deferred until seed-ripe), followed by one year of yearlong rest, as shown in Table 1. Each pasture receives only one grazing treatment per year, and the treatments are rotated annually as shown in Table 1. The growing season is defined as

beginning with the period of rapid plant growth (generally early to mid-May) until seed-ripe for the latest maturing native grasses, such as bluebunch wheatgrass or western wheatgrass (generally early August). Because the exact dates can vary as much as a few weeks depending on the location in Montana, specific dates for livestock movement are developed for each project. Occasionally it may be necessary for the grazing system to allow for some livestock to be in the pasture scheduled for the A treatment (Table 1) beyond the growing season.

A three-pasture grazing system is used as an example (Table 1) to show the landowner might typically rotate livestock through pastures to meet the minimum levels and required sequence of rest from livestock grazing. In practice, the landowner is not limited to any particular number of pastures; many projects include more than three pastures. In some instances, sub-pastures are employed to meet riparian or other objectives on the land. If livestock are grazed, they must be moved through the pastures in compliance with these standards and the grazing plan. Where grazing occurs during the growing season, the three-treatments outlined in Table 1 are essential and the total number of pastures and/or sub-pastures will vary between projects.

Table 1. Livestock Grazing Formula using a three-pasture approach as an example.

| Grazing Seasons* | Pasture 1 | Pasture 2 | Pasture 3 |
|------------------|-----------|-----------|-----------|
| Year One | A | B | C |
| Year Two | B | C | A |
| Year Three | C | A | B |

*When all treatments have been applied to all pastures, the grazing rotation begins again at Year One.

A = livestock grazing allowed during the growing season

B = livestock grazing begins after seed-ripe time

C = rest from livestock grazing yearlong

Winter and/or Early Spring Grazing

In some situations, an early grazing treatment (prior to mid-May) may be considered. However, it must be kept in mind that grazing capacity and forage production in the year a pasture is grazed from winter to beyond mid-May, will be temporarily reduced. On projects where early spring grazing (prior to rapid plant growth) is combined with summer (active growing season) grazing the three grazing treatments described in Table 1 must be employed.

It is usually more efficient to manage winter grazing separately from spring-summer grazing. If livestock are to be grazed in a native range or riparian pasture in winter or early spring (generally December through early May), and a separate grazing formula is required, it must be coordinated with the summer-fall grazing system as follows: Minimum required rest in pastures where livestock are grazed and/or fed hay during winter is one winter of rest in every two years. Hay, grain, salt, protein, or other supplements will not be placed in riparian areas during winter or any other season. Minimum required rest in pastures where livestock are grazed in spring, prior to early May, is one spring of rest in every two years. Any pastures grazed later in spring than early-mid May require the greater amount of rest shown in Table 1. As a

minimum, when grazing is limited to winter or the non-growing season period, a two-pasture alternate use approach is frequently used. The area designate for winter grazing is divided into two pastures and each year one pasture is grazed during winter months and the other rested and use is alternated from year to year.

During winter months cattle tend to concentrate in wooded areas (shrub or tree-dominated areas) for shelter. This must be kept in perspective when assessing the impacts to woody vegetation. It is often the case that with careful placement of hay, cattle impacts to woody vegetation to protect it from damage, but should only be done once efforts to control livestock distribution by other means have proven ineffective. An acceptable level of impact will vary depending on the objectives (i.e., a level of woody vegetation impact acceptable for a working cattle ranch may be much different than for a WMA).

Scope

The goal is to include as much of the lands under easement as possible within the grazing system, but one must be realistic in recognizing the animal husbandry needs of a livestock operation. It may be necessary to set aside small areas as animal husbandry units to be used at the landowner's discretion. Such areas might include calving pastures, branding pastures, sorting pens, bull pastures, or holding corrals. As long as the majority of the lands involved are within a grazing system, meeting the minimum standards, this is acceptable.

Non-native Pasture

It is common for livestock operators to have pastures on their land that are non-native range. The landowner's goal is usually to keep these pastures productive as non-native pasture. The pastures typically are seeded with an exotic pasture grass or grass mix. On occasion forbs like dry-land alfalfa are included in the planting. The FWP minimum grazing standard does not apply to these pastures. In cases of non-native pasture a grazing strategy that is coordinated with the grazing system and meets the needs of the ranch should be worked out. In the case of crested wheatgrass pasture it may be necessary to allow grazing early (late-winter or early spring) each year to maintain palatability. In the case of other pasture grasses, such as smooth brome, a deferred approach works well; a pasture is grazed during the growing season in Year One then deferred from grazing until near seed-ripe in Year Two (about the time such grasses would normally be harvested as hay). This will maintain the productivity of the non-native species until replanting is necessary and in some cases maintain them as attractive feeding sites for large wild ungulates. It is important to keep in mind that these areas, unlike native range, are essentially cropland and whether grazed or left idle will eventually need some sort of agricultural practice to maintain their productivity.

It is usually best to leave irrigated pasture management to the landowner's discretion. If important riparian is included in the field it might be necessary to fence the riparian zone from the irrigated pasture to protect it from livestock grazing. Usually grazing strategies employed on irrigated pasture are not consistent with proper management of key native riparian plants. In

such situations it may be necessary to apply the guideline series entitled: *The Need for Stream Vegetated Buffers Parts 1 through 3*, Montana Department of Environmental Quality 2008.

Livestock operators often place cows in hayfields during winter months. In such cases the field should be managed at the landowner's discretion and in some instances it might be necessary to fence out riparian from the hayfield to protect it from grazing.

Stocking Rate

Usually FWP does not require a maximum stocking rate as part of the grazing strategy on easements or Upland Game Bird Habitat Enhancement Projects. In such cases it is clearly stated in the grazing plan, that the maximum stocking rate will be ultimately determined by the operator's ability to conform to the grazing system. In other words the livestock numbers may increase as long as the plan can be followed and livestock movement dates are not compromised. Such an approach is consistent with the reality that, for most easement projects, the primary use of the land is agricultural.

Occasionally a landowner has requested that an upper limit stocking rate be established as a stipulation in the easement. As long as the number of livestock is realistic this is not a problem.

On lands owned by FWP any grazing that occurs will be at stocking levels determined by the agency and approved by the FWP Commission.

Mineral and Other Supplements

On privately owned grazing lands the landowner is given more discretion on locations for placement of mineral block than on FWP lands. However, regardless of land ownership the placing of mineral block within riparian areas will be strongly discouraged. On FWP lands the placement of mineral block will be described as part of the grazing plan. Supplements will be placed away from riparian areas, ponds, and roads. Rocky (stable soil) areas on ridge tops or in the trees are preferred sites.

On FWP lands livestock within pasture grazing systems are not to be fed hay.

Flexibility

Rarely, a severe environmental influence (i.e., fire, drought, grasshoppers) may require a onetime deviation from the prescribed grazing plan. In such cases the landowner is to notify the local FWP representative of the problem. In a timely manner the local FWP representative, Habitat Section representative, and landowner will meet to discuss the issue and work out a solution. It is important to keep in mind that short term adjustments to the grazing plan must be the exception rather than the rule. Allowing grazing to occur in a pasture scheduled for rest is always a last resort. FWP has managed grazing systems across Montana through a variety of

severe environmental events. This experience has shown that when a legitimate problem exists an alternative can usually be found that avoids grazing the pastures scheduled for rest.